Federal service. That order also contained an exemption for agencies and offices doing national security work and allowed the head of the agency to invoke the exception. Not the President, but the head of an agency could do it.

The current statute then was signed by President Carter. He concurred with the language the House and Senate presented to him. But his own bill which he sent to Congress earlier in 1978 also contained an exemption for the work of national security.

This is a well-established need that all Presidents have seen fit to exercise; to the extent, evidently, that extended debate back then was hardly even necessary. I don't know that there has ever been extended debate on the authority the President should have with regard to setting aside collective bargaining agreements in situations pertaining to national security and these other categories until now.

Ironically, while the opponents of the Gramm-Miller substitute and the President's preferred course of action want the status quo with regard to all other aspects of this bill except the organizational part, but the status quo with regard to the managerial part, they do not want the status quo when it comes to giving the President the authorities that Presidents have traditionally received.

The President can't accept that. He has said so. I hope it is not presented to him like that because we know what the fate of this bill would be. That would not be good for the country. We all know that.

I am hopeful that in these waning days we will be able to, with regard to these two issues, which opponents of Gramm-Miller say are not very significant but which the President says are extremely significant, which you would think would cause a basis for some compromise right there, but I would hope we would be able to address this issue of some flexibility that we have given other departments that we must give the new Secretary on the one hand and, secondly, maintaining the President's traditional position with regard to his national security responsibilities having to do with collective bargaining agreements.

I yield the floor.

The PRESIDING OFFICER (Mr. WYDEN). The Senator from Nevada.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent the Senate now proceed to a period of morning business with Senators allowed to speak therein for a period of up to 10 minutes each and that this time extend until 5:15 today.

The PRESIDING OFFICER. Without objection, it is so ordered.

HOMELAND SECURITY ACT OF 2002—Continued

Mr. REID. Mr. President, the Senator from Pennsylvania is here and he wishes to speak on the bill. I ask unanimous consent we return to the homeland security bill and that there would be a period for debate only, and the Senator be recognized for whatever period of time he wishes to speak, and that when the Senator from Pennsylvania finishes his statement, we go back into morning business under the previous request.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, it is my hope that the Senate will complete action on the pending homeland security legislation, that we will go to conference with the House of Representatives, and that this bill will be passed, signed into law by the President, before we adjourn because, in my judgment, the most important business the Congress has is to legislate is on homeland security and to do our utmost to prevent a recurrence of 9/11.

The intelligence communities have advised that there will be another terrorist attack. It is not a matter of whether or if, but it is a matter of when. I am not prepared to accept that. I believe another terrorist attack can be prevented. I believe had all of the so-called dots been put together before September 11, 2001, that there was a good chance that terrorist attack could have been prevented.

I say that because there were very important leads which were never coalesced, analyzed, or brought together. I refer to the FBI report out of Phoenix, in July of 2000, about a man taking flight training, had a big picture of Osama bin Laden, very suspicious. That report never got to the upper echelons of the FBI. We had the CIA tracking two members of al-Qaida in Kuala Lumpur. They turned out to be hijackers, two of the pilots involved in September 11. But the CIA never told the FBI or never told INS, and they gained admittance to the country and were part of the suicide bombers.

Then there is the famous, or perhaps infamous, national security agency report on September 10 that something dire was about to happen the very next day. It wasn't translated until September 12. Further, the very important effort by the Minneapolis branch of the FBI to get a warrant under the Foreign Intelligence Surveillance Act for Zacarias Moussaoui, who was supposed to have been the 20th member of the hijackers and suicide bombers, was never pursued properly because the FBI used the wrong standard.

We know from the 13-page single-spaced letter written by Special Agent Colleen Rowley that the U.S. Attorney's office in Minneapolis was applying the wrong standard—a 75 to 80 percent probability—and that Agent Colleen Rowley thought it was a standard of more probable than not, which would have been 51 percent. The appropriate legal standard, as defined by the Supreme Court of the United States in Gates v. Illinois, in an opinion by then Justice Rehnquist, was that probable cause is established on the totality of the circumstances based on suspicion. Had the Zacarias Moussaoui matter been integrated, there was a great deal of information available in Moussaoui's computer which was not acquired. The Intelligence Committee hearings have disclosed that in the past two weeks. All of these dots were on the screen, and even more. Had they been brought together, then there is a possibility that 9–11 may have been prevented. At least they would have been on inquiry.

I believe this was a veritable blueprint. I believe we have a very heavy duty to see that this legislation is enacted and all of the intelligence agencies are brought under one umbrella. I tried to do that in 1996 when I chaired the Senate Intelligence Committee. I wanted to bring them all under the CIA. I think it is not really critical under which umbrella, but under one umbrella. Now we have the chance to accomplish that with homeland security.

We have two provisions under the Labor-Management Act that are, so far, providing a controversy that has held the measure from going further. It is my suggestion these two provisions are not too far apart. The law, as set forth in 5 United States Code 7103 says:

> The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter [which is collective bargaining] if the President determines that (a) the agency or subdivision has a primary function, intelligence, counterintelligence, investigative, or national security work, and the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

That is the existing law which the President does not want changed, and there has been an effort by labor to what is called ''shore up'' those provisions of collective bargaining by this language in the Nelson-Chafee-Breaux amendment:

> The President could not use his authority without showing that (1) the mission and responsibilities of the agency or subdivision materially change, and (2) a majority of such employees within such agency or subdivision have as their primary duty, intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

Now, there was a question on my mind as to whether the language of the Nelson amendment was in addition to or in substitution for the existing language on collective bargaining. We had an extensive discussion among Senator LIEBERMAN, Senator THOMPSON, Senator BREAUX, myself, and Senator NELSON was on the floor. At that time, the drafters of the amendment said it was not in substitution for, but in addition to.

Well, the main concern the President has expressed is he is concerned his authority under the provisions relating